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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable James Donato, Judge

MAXIMILIAN KLEIN and SARAH)	
GRABERT, individually and on)	
behalf of all others similarly)	
situated,)	
)	
Plaintiffs,)	
)	
VS.)	NO. C 20-08570 JD
)	
META PLATFORMS, INC.,)	
)	
Defendant.)	
)	

San Francisco, California
Thursday, June 22, 2023

TRANSCRIPT OF PROCEEDINGS

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(APPEARANCES CONTINUED ON FOLLOWING PAGE)

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CSR No. 7445, Official U.S. Reporter

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Also Present:

**Stacy Chen, In-House Counsel
Meta Platforms, Inc.**

Thursday - June 22, 2023

10:26 a.m.

P R O C E E D I N G S

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THE CLERK: Calling Civil 20-8570, Klein vs. Meta Platforms. Counsel?

MS. SCARLETT: Would you like appearances, Your Honor?

THE COURT: What's that?

MS. SCARLETT: Would you like appearances?

THE COURT: Well, of course, yes.

MS. SCARLETT: Okay. Shana Scarlet from Hagens Berman for the consumer plaintiffs.

MR. TERUYA: Kevin Teruya from Quinn Emanuel for consumer plaintiffs.

MR. BATHAEE: Good morning, Your Honor. Yavar Bathaee, from Bathaee Dunne LLP, for the advertiser plaintiffs.

MR. DUNNE: Brian Dunne for advertiser plaintiffs.

MR. PEPPERMAN: Good morning, Your Honor. Brantley Pepperman from Quinn Emanuel for the consumer plaintiffs.

MR. COUGHLIN: Good morning, Your Honor. Patrick Coughlin from Scott & Scott, advertiser plaintiffs.

MS. MEHTA: Good morning, Your Honor. Sonal Mehta from WilmerHale on behalf of the defendant. With me are my colleagues David Gringer and Molly Jennings. And we have in-house counsel from Meta Platforms, Inc., Stacy Chen here as

1 well.

2 **MS. SESSIONS:** Good morning, Your Honor. Justina
3 Sessions of Freshfields Bruckhaus Deringer for non-party
4 Netflix.

5 **THE COURT:** Sessions. Ms. Sessions.

6 **MS. SESSIONS:** Yes, Your Honor.

7 **THE COURT:** From Netflix.

8 Okay. 12 discovery letters. Breaking every record in the
9 wrong way.

10 I'm not going to accept any more discovery letters from
11 anyone. You can ask, you can make a proffer, but you'd be wise
12 not to. We have spent far too much time on these disputes.

13 You're out of time anyway tomorrow; right?

14 **MS. MEHTA:** That's right, Your Honor.

15 **THE COURT:** Okay. I'm not extending anything. No
16 dates are being extended under any circumstances. So any
17 request for continuances or extensions are denied.

18 Let's just plow through these things.

19 Okay. Let's start with Docket Numbers 558-3 and 563.
20 Mr. Zuckerberg again. Oh, wait. No. This is -- this is the
21 prior issue we had about whether people can see protective
22 order documents that they appear on.

23 So, all right. What's the problem?

24 **MS. MEHTA:** Yes, Your Honor. I'm happy to address
25 this. I think I can make this short.

1 We're almost done with depositions. We have depositions
2 tomorrow.

3 **THE COURT:** This letter is from the plaintiffs.

4 **MS. MEHTA:** I believe 559 is from us and 563 is from
5 them. It's cross-motions on the same issue.

6 **THE COURT:** Let's start with the plaintiffs. They
7 sent the first one in.

8 **MS. MEHTA:** Fair enough.

9 **MR. COUGHLIN:** Your Honor, that's correct. This was
10 filed a month and a half ago. We've taken about 30 depositions
11 in between that time. So I think this issue has died away.

12 But the issue is whether somebody like Ms. --

13 **THE COURT:** If it's died away, let's just stop. I've
14 got 12 of these things.

15 **MR. COUGHLIN:** Got it.

16 **THE COURT:** It's done? Okay. By the parties
17 agreement, it's terminated.

18 Okay. The next one is Docket Number 564, 596-3. This is
19 back to Mark Zuckerberg.

20 All right. Plaintiffs, what's the issue?

21 Oh. Defendants, you sent that one in. Okay. Go ahead.

22 **MS. MEHTA:** Yes, Your Honor. Sorry. We went first on
23 this one, seeking --

24 **THE COURT:** Yeah.

25 **MS. MEHTA:** -- a protective order to just enforce your

1 prior ruling that Mr. Zuckerberg's deposition would be limited
2 to three hours.

3 They took three hours with him. Advertisers had an hour
4 and a half to ask him questions about all sorts of things.
5 They chose to spend their time asking him about things that he
6 told them repeatedly he didn't know about. And now they're
7 arguing that they want more time with him, our CEO, to cover
8 other things that they elected not to ask him about.

9 They have not come close to showing that he has unique,
10 non-repetitive knowledge under the apex standard. Every
11 document they say they want to ask him about, lots of other
12 people are on. They've had north of 40 depositions of current
13 and former employees, including on the exact same issues that
14 they are trying to talk to Mr. Zuckerberg about.

15 They've had their chance. Discovery is done. It makes no
16 sense to bring him back, waste his time asking him more about
17 things he doesn't know about. They had their chance.

18 **THE COURT:** Okay. Plaintiff?

19 **MR. DUNNE:** Brian Dunne for the advertisers.

20 I guess what you had previously ruled was that you would
21 grant their motion for three hours and that if we had things
22 that we needed to ask that were unique and non-repetitive, to
23 make an application, which is what we did.

24 **THE COURT:** No. I said if there was good cause, I
25 might consider it. I didn't say if you have more, just bring

1 it in.

2 So what's the good cause? What is it that you were
3 prevented -- "good cause" means something that is relevant and
4 material and you were not able to ask it for some reason out of
5 your control. So what is that?

6 **MR. DUNNE:** The reason that we weren't able to ask him
7 things was simply the 87 minutes that we had --

8 **THE COURT:** I gave you three hours. So, I mean, use
9 it as you wish. But the fact that you ran out of time, that's
10 not good cause.

11 **MR. DUNNE:** Okay.

12 **THE COURT:** Is that it?

13 Okay. That motion is denied.

14 All right. Let's go to 565 and 606-2. Oh, 56- -- sorry,
15 sorry, sorry. 563 -- 556-3 and 606-2. Something about -- oh,
16 no. I'm taking this one -- forget about that one. This is the
17 wiretapping thing. I'm going to deal with that separately. So
18 forget that. False start.

19 Okay. Next one will be 569-3 and 603-2. This is from the
20 plaintiffs. First one is from the plaintiffs. IA -- IAPP?
21 IAAP. IAAP program.

22 Okay. Go ahead.

23 **MR. DUNNE:** This is -- so you said you didn't want to
24 deal with the privileged one; right? This is the one about the
25 interrogatory with Onavo?

1 **THE COURT:** Well, it's your letter.

2 **MR. DUNNE:** Yes. Yes.

3 **THE COURT:** You tell me.

4 **MR. DUNNE:** No. I --

5 **THE COURT:** All right. Go ahead.

6 **MR. DUNNE:** Because this was filed under seal, it
7 doesn't have the docket number on it.

8 **THE COURT:** Yeah. It's 569-3. That's the sealed
9 version.

10 **MR. DUNNE:** So, Your Honor, more than -- well, I guess
11 about exactly one year ago, we served an interrogatory on Meta,
12 asking them for everything done by their Onavo team, collected
13 by Onavo and the Onavo apps. That was to help us understand
14 the information that was being collected by this particular
15 team within Facebook that was designed for competitive
16 intelligence.

17 We found out during discovery -- and I'll hew closely to
18 the letter so that we don't intrude into anything that hasn't
19 been unsealed.

20 **THE COURT:** How about this? Just tell me what you
21 want. Okay? What is it you think you're missing, and why do
22 you think you're entitled to it?

23 **MR. DUNNE:** So, well, we -- at this point, I just --
24 we spent a lot of extra deposition time on getting these
25 things. And so I guess, given Your Honor's ruling that you

1 don't -- you're not going to allow us to take any more
2 depositions to fix that up, I think we're --

3 **THE COURT:** That's not a good way of phrasing it.
4 You've had more than a country mile to do whatever you wanted,
5 and you directed your discovery in a way that was totally up to
6 you. So this is not a matter of my denying you anything. This
7 is a matter of you coming up on a deadline that I'm not
8 extending. So please --

9 **MR. DUNNE:** No. I --

10 **THE COURT:** -- don't -- don't try to suggest to
11 yourself or to anybody else that this is a matter of your being
12 shortchanged.

13 You've gotten far more than you probably should have, had
14 I been looking at this more carefully. So you're not in a
15 position to complain. Okay?

16 So this is withdrawn?

17 **MR. DUNNE:** Yeah. For us, we know this, Your Honor.

18 **THE COURT:** It's withdrawn, terminated.

19 Okay. Docket Number 576-3 and 602. Let's see.
20 Plaintiffs, again, sent the first letter. Looks like another
21 Onavo issue.

22 Same result? Withdrawn?

23 **MR. DUNNE:** So I thought that the last one was the
24 Onavo rogs.

25 If you were referring last time to the IAAP issue, that

1 would be the crime fraud.

2 **THE COURT:** No. This is Docket Number 576-3, and it
3 mentions Onavo again.

4 **MR. DUNNE:** Oh. I believe that's just a motion to
5 seal.

6 **THE COURT:** I can't hear you.

7 **MR. DUNNE:** Oh. Yeah, that's the interrogatory that
8 we -- that we had discussed. That is the interrogatory brief.

9 **THE COURT:** Well, how is that different from 569-3,
10 which we were just talking about?

11 Oh, wait. I see. Okay. So that's the one we were just
12 talking about; right?

13 **MR. DUNNE:** Yes.

14 **THE COURT:** Okay. Good. That one's terminated by
15 agreement.

16 All right. Just one second. I'm giving my clerks a break
17 by not being out here, so I've got to write all this down.

18 (Pause in proceedings.)

19 **THE COURT:** Okay. Now, the 576-3 and 602. Is that
20 the one we just talked about for Onavo? No. It's a different
21 one.

22 Okay. Plaintiffs, what's happening here?

23 **MR. DUNNE:** 576 was --

24 **THE COURT:** -3.

25 **MR. DUNNE:** Yeah. That's the letter brief on the

1 interrogatory.

2 **THE COURT:** Okay. That's terminated by agreement.

3 All right. 583 and 601.

4 **MR. DUNNE:** Yes, Your Honor. This is in reference to
5 the FTC privilege log.

6 **THE COURT:** Yeah.

7 **MR. DUNNE:** As you'll recall at the last hearing, you
8 ordered Meta to re-review a sample of 2500 --

9 **THE COURT:** Yes.

10 **MR. DUNNE:** -- entries we received.

11 **THE COURT:** Turned out a lot of them were
12 reclassified; right?

13 **MR. DUNNE:** Yes.

14 **THE COURT:** So what would you like to do?

15 **MR. DUNNE:** We would like a re-review of the rest of
16 their log.

17 **THE COURT:** Okay. That was the point. And you did
18 have a very high re-call rate. So --

19 **MS. MEHTA:** Yes, Your Honor.

20 **THE COURT:** -- this is a sample.

21 It's a living experiment, and I think the experiment says
22 you've got to finish the job.

23 **MS. MEHTA:** So, Your Honor, just one note on that.

24 We -- in recognition of the fact that I expected that
25 might be your reaction, we voluntarily agreed to re-review

1 90,000 additional documents. So every document that touches
2 any deponent in this case has been re-reviewed already. That's
3 200,000 of the 330,000 documents from that log.

4 What they're now asking for is the remaining portion of
5 that log, which are for witnesses or custodians that have no
6 bearing on this case. They're not deponents on this case.
7 That investigation, as they've admitted, included lots of
8 different issues that don't come into play here.

9 So what we're asking for --

10 **THE COURT:** Let me just jump in.

11 If you put them on the privilege log, you're going to have
12 to do it. So just do the balance. Okay? Just finish that --
13 I mean, the whole point of this was to test it. You had a very
14 high -- on the sample test, you had a very high downgrade rate.
15 I was expecting, like, 10 percent. You're over 50.

16 So, okay. Just finish those all. That's the disposition.
17 So everything else in the privilege log will be reviewed in the
18 same manner. Okay? But only the privilege log. That's it.
19 That's all we're talking about.

20 **MS. MEHTA:** Yes, Your Honor, from the FTC
21 investigation. Understood.

22 **THE COURT:** Yeah. Okay.

23 Okay. Now, Docket Number 586 and 613. This one started
24 with defendant. Depo topics.

25 **MR. GRINGER:** Yes, Your Honor. David Gringer from

1 Meta.

2 Fundamentally, we have agreed to do a lot. The topics at
3 issue are incredibly broad. There is no realistic way to
4 prepare someone. We've suggested a number of alternatives that
5 we think are reasonable and fair, including backdating some of
6 the 60 depositions. We've made people available on a number of
7 these topics.

8 But Your Honor has rules that make sense for a reason, I'm
9 sure, based on your own experience. We simply cannot prepare
10 people on topics as broad as "Facebook's data use since 2007."
11 Not practical. Not realistic.

12 **THE COURT:** Okay. Let's see. Let's just take Topic 2
13 here. So what is Topic 2? Topic 2 is what?

14 **MR. GRINGER:** More data collection and use practices.
15 This topic includes, but is not limited to, and then there are
16 11 different subparts, which I would be happy to read but I'm
17 not sure that's the best use of the Court's --

18 **THE COURT:** No. I have them here.

19 I mean, Meta lives to collect data. So you're basically
20 asking everything Meta did for multiple -- I don't quite
21 understand -- a 15-year period. 15 years.

22 **MR. TERUYA:** No, Your Honor. There's very specific
23 parts of this topic that are at issue now. Some of the parts
24 of it, they've already agreed to give testimony on.

25 What is still at issue is 2(a). There's 30 specific

1 statements that they asked us about. They said: What are the
2 misrepresentations or admissions? We listed them. They're in
3 Attachment C. So we want to ask about that.

4 **THE COURT:** All right. So this is the subtopic with
5 respect to 30 statements or omissions between 2006 and 2021
6 which the plaintiffs believe are misleading or deceptive.
7 They're specific statements?

8 **MR. TERUYA:** Yes. They're Attachment C. They're
9 listed in an interrogatory response.

10 **THE COURT:** All right. Well, Defendant?

11 **MR. GRINGER:** Well, you know, this is the first I'm
12 hearing that he's only asking about that one. We tried to
13 negotiate something reasonable. There are, as Your Honor just
14 noted, 11 --

15 **THE COURT:** All right. That's granted. I'll do that
16 one. That's fine.

17 Okay. What's the next subsection of Topic 2?

18 **MR. TERUYA:** The only other part of 2 that's left is
19 2(c), which --

20 **THE COURT:** I have Roman numerals. So this would be
21 (iii) in mine? A, B, C?

22 **MR. TERUYA:** Yes, in C.

23 **THE COURT:** Meta's app developer investigation?

24 **MR. TERUYA:** No. It's the domestic regulators'
25 investigation of Meta's data collection and use practices.

1 It's just asking for a list of what investigations there are,
2 when they started, when they ended, and what the result was.

3 We even said, like, if you want to give us --

4 **THE COURT:** What is it again? Meta's what?

5 **MR. TERUYA:** Domestic regulators' investigations of
6 Meta's data collection and use practices.

7 **THE COURT:** Well, let's see. I actually have several
8 on that. I have, one topic is the identity of any regulator;
9 another topic is the subject matter of any regulatory; the
10 third is the dates of any regulatory. So we're not matching.

11 What specifically --

12 **MR. TERUYA:** Yeah.

13 **THE COURT:** What specifically is it?

14 **MR. TERUYA:** Those go together. They broke them out
15 into pieces. But -- so number -- going by their letter, little
16 Roman (viii), (ix), (x), and (xi) go together.

17 But it's basically a list of what are the investigations,
18 when did they start, when did they end, what's the result, and
19 what's the subject matter.

20 **THE COURT:** You can do that in an interrogatory.

21 **MR. GRINGER:** That was exactly our position,
22 Your Honor.

23 **MR. TERUYA:** We proposed a meet and confer. If they
24 want to give us a written response, written deposition
25 response, interrogatory response, whatever you want to call it.

1 **THE COURT:** Why don't you just does it as an
2 interrogatory. Okay?

3 **MR. TERUYA:** Okay.

4 **THE COURT:** I'm looking at Docket Number 586. Meta
5 will answer (ii), (viii), (ix) and (x) and (xi). Right?

6 **MR. TERUYA:** Yes.

7 **THE COURT:** Okay. You can do that in an
8 interrogatory. Okay?

9 All right. Great. That takes care of that one.

10 What about Topic 3?

11 **MR. GRINGER:** Your Honor, this is one -- it
12 essentially is: How did Facebook decide -- everywhere it
13 displays content to Facebook users, how did it decide to do
14 that, and what did it decide?

15 That is hopelessly overbroad and even -- I'm also not at
16 all sure why it's relevant.

17 **THE COURT:** Determine what content. Okay. Well?

18 **MR. GRINGER:** There are also time constraints
19 remaining. They only have 11 hours for all of these topics
20 left. There are topic limits.

21 I mean, this is -- and I think we proposed a reasonable
22 resolution. There was an FTC deposition on a higher level
23 which we offered to provide them the transcript of.

24 **THE COURT:** Okay. All right. What can you narrow
25 down here, Plaintiff?

1 **MR. TERUYA:** Yeah. So this one is very narrow. This
2 is asking about surfaces, which you heard about, like, in the
3 expert market tutorial presentation from Meta. This is just
4 newsfeed, stories, reels, et cetera. There's different,
5 quote/unquote, surfaces that they have.

6 And we're just asking for each -- what are those; and for
7 each of those, are they -- what determines what you see? Is it
8 the social graph, or is it something else or some combination?

9 **THE COURT:** Well, but it goes back to 2007. I mean,
10 that's awfully far back.

11 **MR. TERUYA:** Right. Yes. But presumably, that hasn't
12 changed very often over time. And some of these surfaces
13 didn't even exist back then.

14 **THE COURT:** I don't know that. Do you know that?
15 Maybe it changes every month. I have no idea.

16 **MR. TERUYA:** Or they could say that it changes every
17 month and that would be the answer. That's what we're looking
18 for, is -- and this goes to market definition. Are these
19 things tied to the social graph or not?

20 And somebody could say it changes every day; it's based on
21 this algorithm. You know, they could give an answer.

22 **THE COURT:** How does surface work? How do you program
23 the surface playlist?

24 **MR. GRINGER:** It really depends on the surface. I
25 mean, Mr. Teruya just gave a list of several surfaces and then

1 said "et cetera," made it sound like it's some small thing.
2 He's basically saying: How do you show people content on
3 Facebook and each way you show them content over 16 years. We
4 can't get someone prepared on such a broad topic.

5 **THE COURT:** Just remind me. What's contained in the
6 surface display?

7 **MR. GRINGER:** That's each element. So if you log on
8 to Facebook, you might see the newsfeed. That's one surface.
9 You might go to groups. That's a different surface. You might
10 watch a video. That's a different surface.

11 That means each activity, how do you -- what content do
12 you see and why are you seeing it.

13 **THE COURT:** Well, do the users pick their surfaces?

14 **MR. GRINGER:** They did not. And the truth is, it's a
15 very -- even on one surface, it's extraordinarily broad.

16 **THE COURT:** They're randomly played by Meta?

17 **MR. GRINGER:** I'm not sure I follow you entirely.

18 **THE COURT:** Well, you're not having any answers that
19 help me narrow this for you, so I'm inclined to just let it go
20 forward.

21 **MS. MEHTA:** Your Honor, maybe I can help answer that
22 question.

23 I think what you're asking is, on the Facebook page, when
24 a user interacts with all of the different surfaces, do they
25 choose what surfaces they interact with, if I understand the

1 question.

2 **THE COURT:** Well, that's part of it. And the answer
3 is "no"; right?

4 **MS. MEHTA:** The answer is there's lots of different
5 surfaces, and users may click into one, click into another.

6 The Facebook page, as you might imagine, has evolved a
7 tremendous amount since 2007. Mr. Schultz testified about all
8 the new surfaces and features that are continually added, like
9 stories, and then stories with stickers, and all of that that
10 he talked about. So the idea that we have to have someone to
11 come and talk about every change that's made to a software
12 platform --

13 **THE COURT:** I'm trying to find a -- look, it's
14 perfectly fine -- there must be someone who can say, at a high
15 level, "This is how we program surface content." Somebody must
16 be able to say that.

17 **MS. MEHTA:** I think one thing that --

18 **THE COURT:** Somebody is programming surface content at
19 Facebook. Now, maybe it's a different person for each genre.
20 I don't know. But there should be someone who could say, "For
21 every surface, as a general practice, here's sort of the
22 parameters of what we think about when we stock the surface
23 experience for users."

24 **MS. MEHTA:** I think it's going to be very different
25 across different surfaces.

1 So one question is: Can they pick two or three surfaces?
2 And then we can try to make someone available on those.

3 **THE COURT:** All right. That's fair.

4 Pick three. What three would you like?

5 **MR. TERUYA:** Well, Your Honor, they're the ones
6 bringing up these other surfaces, saying that, oh, this shows
7 that Meta competes in this or that, like it's the presentation
8 you received from Mr. Schultz at the expert market definition
9 tutorial. But, you know --

10 **THE COURT:** Okay.

11 **MR. TERUYA:** So we can --

12 **THE COURT:** Pick three.

13 **MR. TERUYA:** -- pick some if they're not going to --

14 **THE COURT:** What three surfaces would you like? This
15 is your chance. So do you want --

16 **MR. TERUYA:** Could I have one second?

17 **THE COURT:** Sure.

18 (Co-counsel confer off the record.)

19 **MR. TERUYA:** We'll pick newsfeed, reels, and stories.

20 **THE COURT:** Reels. Okay. Reels, stories, and
21 newsfeed. All right. Done. Okay. So that will be Topic 3:
22 reels, news feeds, and stories.

23 Okay. Topic 4.

24 **MR. GRINGER:** This is another extraordinarily broad
25 one, Your Honor. It's any discussion of any form of

1 compensation, whether it's monetary or not, to every Facebook
2 user for their data, for their time, or for their attention. I
3 don't understand how we could possibly identify every
4 discussion on any subject.

5 What we've said is, if there are particular programs that
6 we have considered over time -- and there certainly have been
7 questions about that -- if they identify specific programs that
8 they're interested in asking about, then we might be able to
9 reasonably prepare someone. But we can't search the company
10 for every discussion over 16 years on such a broad topic. It's
11 not possible.

12 **MR. TERUYA:** Your Honor, to help here, we already
13 offered to narrow to any review, evaluation, et cetera, that
14 was sufficiently serious that it was either presented to
15 high-level employees at Facebook or actually executed on.
16 We're not looking for every scrap of paper, metaphorically
17 speaking, on this topic.

18 **THE COURT:** All right. Well, I think programs that
19 actually paid users, that's fine. That should be easy. Okay?

20 And then I think any program presented to senior
21 management as a proposal, if they didn't do it, what difference
22 does it make?

23 **MR. TERUYA:** Just the fact that they considered it and
24 looked at it and it's not pie in the sky if it was presented to
25 Mark Zuckerberg or other high-level management, then it was

1 sufficiently serious that it's not --

2 **THE COURT:** I don't think just because it went to the
3 C-suite people means it's in any way realistic.

4 And, first of all, what are you going to do with that at
5 trial? Are you going to stand up and tell the jury, "Here's a
6 program. They never did it, but they thought about it."
7 That's not going to get you anywhere.

8 **MR. TERUYA:** Well, they --

9 **THE COURT:** I'll let you do any actual programs.
10 Okay?

11 **MR. TERUYA:** Thank you.

12 **THE COURT:** But that will be limited to any actual
13 payments.

14 Okay. Topic 5, last one.

15 **MR. GRINGER:** So this one is one where there has been
16 a tremendous amount of fact witness deposition testimony.
17 We've offered to back designate. This is everything that we've
18 ever considered about the App Tracking Transparency issues,
19 including our analysis of projected impact. We think there's
20 enough testimony that we'd simply like to back designate.

21 And this one really goes to the issue, Your Honor, that we
22 asked repeatedly when -- before depositions started and as they
23 were getting scheduled, "Please serve us a 30(b)(6) notice so
24 when our relevant personnel are being deposed in their
25 individual capacity, we can put them forward as our corporate

1 representative."

2 And in this case, on this topic, now we're going to have
3 to bring one or more people back, when this was well-known to
4 the plaintiffs, they easily could have served a notice, and we
5 could have avoided having a double deposition of the same
6 person.

7 **THE COURT:** Okay. Plaintiff?

8 **MR. TERUYA:** So, Your Honor, this is about the
9 App Tracking Transparency feature of Apple, which you've heard
10 about. It's an important issue in the case.

11 We deposed the two specific people that they listed that
12 they say they would want to backdate testimony from.

13 We asked them about not just, "Hey, what was the projected
14 effect of this feature?" but "What happened after that? What's
15 the actual effect?" And they both said they didn't know.
16 Like, what did Facebook do to respond to that? What was the
17 actual impact? And they didn't know.

18 And so we are following up now. And I think this is a
19 classic use of 30(b)(6) to just follow up on it with a --

20 **THE COURT:** What specifically is the topic, then?

21 **MR. TERUYA:** We want to know about the actual or
22 projected impact or effect of the App Tracking Transparency
23 feature.

24 **THE COURT:** Okay.

25 **MR. GRINGER:** This is one we could easily do by an

1 interrogatory if they're really just --

2 **THE COURT:** That's fine. You can get a deponent on
3 that. Okay. So that's granted, but just for that one topic,
4 actual or projected impact or effect of App Tracking
5 Transparency.

6 Okay. I think that's it for the depositions. All right.

7 **MR. GRINGER:** Thank you, Your Honor.

8 **MR. TERUYA:** Thank you, Your Honor.

9 **THE COURT:** Okay. Now, next set.

10 Okay. Docket 587 and -- oh, this is to extend expert
11 deadlines. That's denied for the reasons I stated earlier.

12 Okay. Next set is 588 -- sorry -- 589-3 and -- oh, it's
13 Netflix. Okay. 589-3 and 615.

14 Okay. Plaintiffs started that one.

15 **MR. DUNNE:** So, Your Honor, last CMC in April, we
16 moved to compel the production of documents from Netflix; and
17 their response was, "We already did a search."

18 And you ordered us to meet and confer about the scope of
19 that search. And when we corresponded and met and conferred,
20 we found that for 14 of our 16 RFPs, no search was conducted at
21 all and that, for RFPs 1 and 2, a search was conducted of a
22 single custodian who didn't join Netflix until after our
23 allegedly anticompetitive agreement between them and Facebook.

24 **THE COURT:** Okay.

25 **MR. DUNNE:** And so we're back.

1 **THE COURT:** All right. Netflix?

2 **MS. SESSIONS:** Your Honor, I think both the scope of
3 the searches that Netflix did and the -- we would disagree both
4 with the scope of the searches that we did and with the state
5 of the meet-and-confer record.

6 So we've been consistent throughout our discussions with
7 the plaintiffs about the scope of the searches that Netflix
8 did. So it's no surprise to them that we did a custodial
9 search of the --

10 **THE COURT:** Okay. Let me just jump in.

11 I don't know. I have no idea. What do you want me to do?

12 **MS. SESSIONS:** So, well --

13 **THE COURT:** I have no idea what either of you did. I
14 have no visibility whatsoever on what you asked for or what
15 Netflix gave you. So what do you want me to do?

16 **MS. SESSIONS:** Your Honor, if I may --

17 **THE COURT:** I'm asking the plaintiff.

18 What do you want me to do?

19 **MR. DUNNE:** We ask that they be compelled to do a
20 search for just --

21 **THE COURT:** Why?

22 **MR. DUNNE:** -- 12 through 15.

23 **THE COURT:** I don't know if they did it or not.
24 You're asking me to order them to do something, I have no idea
25 whether it happened or not. So what do you want me --

1 **MR. DUNNE:** So to be clear, I think the record is
2 clear that they didn't do a search for interrogatory --

3 **THE COURT:** It's not clear. I wouldn't be asking you.
4 It's plain as mud to me. I have no idea what you all have been
5 doing, flopping around with these documents. I have no idea.

6 And I'm not taking your word for it that it's all great.
7 I'm sorry. I'm not taking either one's word because that's not
8 evidence. It's just your saying it.

9 So I don't know what to do.

10 **MS. SESSIONS:** Understood, Your Honor. And here's
11 where I think the -- here's where I think the real problem is.

12 So as I understand it, the requests on which they have
13 moved to compel -- with the exception of 1 and 2, which I had
14 understood they were not going to move to compel on based on an
15 e-mail that they had sent us -- their RFPs 12 through 15
16 concern this alleged agreement that they believe was struck
17 between Mr. Hastings, when he was on the board --

18 **THE COURT:** I'm sorry.

19 **MS. SESSIONS:** -- of directors of Facebook.

20 And we searched -- and, Your Honor, we searched --

21 **THE COURT:** Please don't speak over --

22 **MS. SESSIONS:** -- his e-mail.

23 **THE COURT:** -- me.

24 When I start, you need to stop. Okay, Counsel?

25 **MS. SESSIONS:** Yes, Your Honor.

1 **THE COURT:** Yelling does not advance you. In fact, it
2 puts you behind the ball. So, please, I've got 12 of these
3 things, and we all have far better things to do.

4 So you're going to have a -- somebody at Netflix is going
5 to swear out a declaration, attesting to the searches that they
6 did, custodian, whatever. It's under penalty of perjury. File
7 it within one week, and give it to --

8 You can look at it then and tell me if there's any issue.
9 All right?

10 **MS. SESSIONS:** We can do that, Your Honor.

11 **THE COURT:** Now, if it turns out that they weren't
12 adequately searched, there are going to be consequences.

13 **MS. SESSIONS:** Yes, Your Honor.

14 **THE COURT:** I want to be clear about that. Okay?

15 All right. And that declaration should detail who did the
16 searches, who searched, what dates, what was found, what was
17 not found. Okay?

18 "We didn't find anything, and I'm representing that there
19 is nothing."

20 There have to be affirmative -- I'm not going to accept --
21 let me just be clear. It's going to be a custodian who did the
22 actual searches who's going to identify who he or she searched,
23 what files were searched by name, date ranges, what was found.
24 And if nothing was found, that person is going to certify there
25 were no responsive documents found. This will all be under

1 penalty of perjury.

2 **MS. SESSIONS:** Understood, Your Honor.

3 **THE COURT:** All right.

4 Okay. Let's see. 592 -- 591-2 and 614. This is
5 Ms. Frederick. Okay. Plaintiffs -- sorry. Defendants started
6 this one.

7 **MR. GRINGER:** Yes, Your Honor. We have a fundamental
8 issue here, which is, the named plaintiffs on the advertiser
9 side have not read the complaint and they're not familiar with
10 the allegations. And what that means is we can't challenge
11 them in depositions about whether they were injured by the
12 conduct they're suing on.

13 And in this case, the plaintiff was an entity. We served
14 a 30(b)(6) notice. Their designee testified she hadn't read
15 the complaint, was completely unfamiliar with the allegations.

16 All she said is, "Facebook has a monopoly on advertising
17 to Facebook customers while they're on Facebook."

18 **THE COURT:** Let me just pause there for a moment.

19 Okay. You have cross-examination gold. What are you
20 complaining about? You've got a plaintiff who doesn't know
21 anything about the case. Go nuts at trial.

22 What do you want me to do? I've said this before. I
23 cannot force people to say things that they can't answer. I
24 can't do it. I can't go shake a stick at Ms. Frederick and
25 say, "Now, come on, just say something." That's not good.

1 All right? So don't ask.

2 **MR. GRINGER:** In this case --

3 **THE COURT:** What is it you want me to do? I'm not
4 going to subject her to another deposition where you just say,
5 "Are you sure you don't know anything?" That's not going to
6 happen.

7 **MR. GRINGER:** I understand, Your Honor. She was a
8 corporate designee --

9 **THE COURT:** This is a very good example about how this
10 letter system has been abused. There is nothing meaningful
11 that I can do for you. Okay? You have a witness; and if that
12 witness gets up and says, "I don't know nothing about nothing,"
13 what do you want me to do? I cannot create a witness for you.
14 Don't ask. All right?

15 This is denied.

16 **MR. GRINGER:** Thank you, Your Honor.

17 **THE COURT:** Please learn from this for your next judge
18 and for your next case and for the next poor client that you're
19 billing for these things. Don't waste time on letters like
20 this. It's a complete waste of your client's money and scarce
21 judicial resources. Don't ask to squeeze blood from a turnip.

22 All right. Oh, 609. All right. Go ahead, Meta.

23 **MS. MEHTA:** Yes, Your Honor. I think this one is
24 hopefully relatively straightforward, which is, we received a
25 supplemental interrogatory response last week from the

1 advertisers including in their contentions reliance on
2 agreements that are outside the statute of limitations period.

3 Your Honor will remember that in the motion to dismiss
4 phase, they disavowed reliance on anything that took place
5 outside the statute of limitations period, and you said in your
6 order they would be held to that, and now they are trying to
7 rely on precisely the type of material they disavowed reliance
8 on.

9 So we're simply asking for that to be struck so that
10 there's no question those agreements are out.

11 **THE COURT:** Well, that was for a claim, not --
12 relevance is a little bit broader.

13 **MS. MEHTA:** Yes, Your Honor, but this is a contention
14 as to what they're relying on. They're specifically relying on
15 these agreements --

16 **THE COURT:** Oh, this is -- I see.

17 **MS. MEHTA:** -- as exclusionary conduct, which is a
18 direct affront to what they said and what you said you would
19 hold them to.

20 **MR. DUNNE:** Your Honor, may I respond?

21 **THE COURT:** I mean, why are we doing this now? You
22 can just bring a motion in limine.

23 **MS. MEHTA:** We debated that --

24 **THE COURT:** Why is it --

25 **MS. MEHTA:** -- Your Honor, and that's fine.

1 **THE COURT:** Why is it a discovery letter issue?

2 **MS. MEHTA:** We were doing it in the procedural posture
3 of a motion to strike the interrogatory response; but if you'd
4 prefer we do it as an in limine motion, we're happy to do that
5 as well.

6 **THE COURT:** If I said you can't bring anything before
7 a certain date as evidence and they try to bring it in, bring a
8 motion saying: Can't do it.

9 **MS. MEHTA:** Will do. Thank you.

10 **THE COURT:** This is discovery, Ms. Mehta. You
11 understand the difference between getting ready for trial and
12 sending in a dozen discovery letters. I know you're not
13 responsible for our dozen, but please --

14 **MS. MEHTA:** I do, Your Honor. I understand.

15 **THE COURT:** -- use some discretion. Okay?

16 **MS. MEHTA:** I do. And on this one, Your Honor, I will
17 say, we debated that. And my concern was that if we didn't
18 move now to strike the interrogatory response, that they would
19 use it at the in limine stage. But I hear what you're saying.

20 **THE COURT:** No, you're not going to waive anything.

21 **MS. MEHTA:** And we will --

22 **THE COURT:** That's what motions in limine are for.
23 "This evidence is not admissible because." That's the only --

24 **MS. MEHTA:** Understood, Your Honor.

25 **THE COURT:** Now, not because they don't have a claim.

1 It's not a summary judgment substitute. It's because it
2 violates the Court's prior order or whatever.

3 Okay. All right. That resolved that. That's preserved
4 for a later date.

5 **MS. MEHTA:** Thank you.

6 **THE COURT:** Now, this has been going on and on and on.
7 Discovery is over.

8 What's happening with your ADR process?

9 **MS. MEHTA:** Yes, Your Honor. So we have -- both sides
10 have agreed on a private mediator, Greg Lindstrom. And I don't
11 want to get into any conversations, obviously, but I --

12 **THE COURT:** As well you shouldn't. But you have
13 somebody in place. Have you started to see this person?

14 **MS. MEHTA:** Both sides have been having preliminary
15 conversations with Mr. Lindstrom, yes.

16 **THE COURT:** Separately?

17 **MS. MEHTA:** Yes, so far, separately.

18 **THE COURT:** When is the big meeting?

19 **MS. MEHTA:** I don't think we have one scheduled yet.
20 He is working with us -- again, I'm not going to get into any
21 substance. He's working to help us figure out what the right
22 timing and process will be, given that there's two different
23 classes, and what the --

24 **THE COURT:** Oh, okay.

25 **MS. MEHTA:** -- kind of schedule is.

1 **THE COURT:** Well, let's put some heat on it.

2 **MS. MEHTA:** Okay, Your Honor.

3 **THE COURT:** Let's not let this dangle. You know what
4 I mean?

5 **MS. MEHTA:** Understood, Your Honor.

6 **THE COURT:** Plaintiffs, what do you think about that?

7 **MS. SCARLETT:** We've available, Your Honor. We've
8 been having discussions with Greg Lindstrom separately.

9 **THE COURT:** Okay. I will respect his process. It's
10 his deal, so that's perfectly fine. But don't let it languish
11 is --

12 **MS. SCARLETT:** Understood.

13 **THE COURT:** -- is my message.
14 Okay. Now, if you can remind me. Did I set a trial date?

15 **MS. MEHTA:** Yes, Your Honor. We have a trial date at
16 the end of 2024.

17 **THE COURT:** End of 2024. Okay.

18 All right. A lot of expense is coming up. You have an
19 enormous -- actually, probably more expense -- at least as much
20 as you spent so far, and maybe even more. So this is a good
21 time to think about how you're going to turn off the tap in a
22 way that makes everybody at least semihappy. At settlement,
23 you're only semihappy. Nobody is thrilled. You're only
24 semihappy, each side. That's a good settlement, okay, when
25 you're both semihappy. So let's put some heat on it.

1 Okay. I am reluctant to ask: Anything else for today?

2 **MS. MEHTA:** No, Your Honor.

3 **THE COURT:** Excellent answer.

4 Plaintiffs?

5 **MS. SCARLETT:** No, Your Honor.

6 **THE COURT:** Great. Okay. That's it for discovery.

7 Whew, we made it.

8 **MS. MEHTA:** Thank you, Your Honor.

9 **THE COURT:** Done. All right. Thanks.

10 **THE CLERK:** All rise. Court's in recess.

11 (Proceedings adjourned at 11:05 a.m.)

12 ---o0o---

13
14 **CERTIFICATE OF REPORTER**

15 I certify that the foregoing is a correct transcript
16 from the record of proceedings in the above-entitled matter.

17
18 DATE: Sunday, July 2, 2023

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21 

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23 _____
24 Ana Dub, RMR, RDR, CRR, CCRR, CRG, CCG
25 CSR No. 7445, Official United States Reporter